

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 3, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2016-0597-PET

Project No.: 2016-036-PET-NR

Who Submitted the Petition:

On April 25, 2016, the Texas Commission on Environmental Quality (TCEQ or commission) received a petition from Harris County (petitioner).

What the Petitioner Requests:

The petitioner requested that the commission initiate rulemaking to amend 30 Texas Administrative Code (TAC) Chapter 321, Subchapter L: Discharges to Surface Waters from Motor Vehicles Cleaning Facilities, to remove minimum flow requirements from the rule.

Recommended Action and Justification:

The executive director recommends denial of the petition.

The Memorandum of Agreement (MOA) between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System (NPDES) prohibits TCEQ from issuing authorizations under Chapter 321, Subchapter L, relating to motor vehicle cleaning facilities. The MOA states:

"[TCEQ] has promulgated several rules which authorize discharges into and adjacent to waters in the state, in accordance with §26.040 of the Texas Water Code. [TCEQ] agrees it will not authorize [Texas Pollutant Discharge Elimination System (TPDES)] discharges into waters of the United States under these rules until they are amended to include all NPDES requirements, in accordance with 30 TAC §321.141 and subject to public notice, opportunity for comment, [TCEQ] response to comments, and EPA review (as described in Section IV.C. of this MOA). These rules include....30 TAC Chapter 321, Subchapter L, relating to Motor Vehicle Cleaning Facilities....

After program assumption each of these rules may be either repealed and replaced by a general permit issued by [TCEQ], or amended to authorize discharges to water of the United States only in accordance with NPDES requirements."

TCEQ has not repealed and replaced Chapter 321, Subchapter L, with a general permit or amended the rule to add the NPDES requirements. Instead, TCEQ authorizes these discharges under an individual permit which comply with all necessary NPDES requirements. Alternatively, as noted by the petitioner, regulated entities can obtain an

Commissioners

Page 2

June 3, 2016

Re: Docket No. 2016-0597-PET

authorization under 30 TAC Chapter 210, Subchapter E, to reuse the wastewater rather than discharge it to water in the state.

Chapter 321, Subchapter L was enacted before the MOA. If TCEQ amends Chapter 321, Subchapter L, it cannot solely remove the minimum flow requirements as Harris County requests. Rather, in order to comply with the MOA, any change to Chapter 321, Subchapter L must include all necessary NPDES requirements.

For this reason, TCEQ recommends denial of Harris County's request.

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule;
- TWC, §26.040, which authorizes the commission to issue general permits; and
- 30 TAC §20.15, which provides such procedures specific to the commission.

Agency Contacts:

Laurie Fleet, Rule Project Manager, Water Quality Division, (512) 239-5445

Hollis Henley, Staff Attorney, (512) 239-0676

Sherry Davis, Texas Register Coordinator, (512) 239-2141

Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Yvonna Miramontes
David Galindo
Laurie Fleet
Sherry Davis